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January 12, 1998

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JAN 24 1998

The Honorable Dan Morales
Attorney General
P.O. Box 12548
Austin, TX 78711

Opinion Committee

RQ-1070

Dear Attorney General Morales:

As you know, the Texas Legislature passed legislation last year authorizing home equity lending. Since 1912, the law in Texas has been that the foreclosure of a senior lien cuts off all rights of junior lienholders which logically would include inferior home equity liens. *Hampshire v. Greeves*, 104 Texas 620, 143 S.W. 147 (Tex. 1912). The question to be determined is whether foreclosure of a senior lien extinguishes all rights under an inferior home equity lien created under Texas Constitution, Article XVI, 50(a)(6).

The second question to be determined arises after a home equity loan is foreclosed. According to the terms of standard notes and deeds of trust, the trustee or substitute trustee pays from the money received at the foreclosure sale in the following order: (a) trustee's fees; (b) attorney's fees; and (c) the amount owed to the lender. If excess proceeds remain, i.e., the difference between the funds received at the sale of the property and the pay out to the trustee, attorney and lender, the trustee distributes the excess proceeds in order of priority to inferior lienholders and then to the debtor.

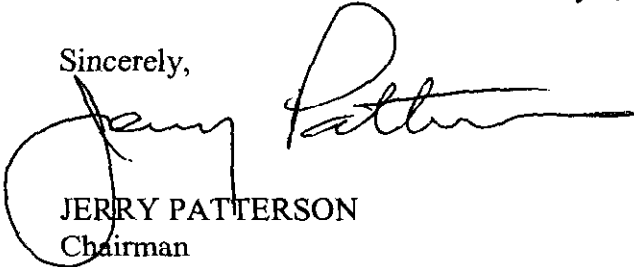
Example:

Foreclosure Sale Price	\$ 100,000
Trustee's Fee (generally 2-1/2% of foreclosure sale price)	\$ 2,500
Attorney's Fees (usually 10% of the unpaid principal amount)	\$ 5,000
Amount Owned to Lender	\$ 50,000
Total:	(Excess proceeds) \$ 42,500

Query: May trustee's fees, attorney's fees and the lender's pay off be deducted from the amounts to be distributed to inferior lienholders and the debtor if it is a home equity lien that is foreclosed?

I appreciate your issuance of an opinion on the above referenced questions as soon as possible the effective date of the Act was January 1, 1998.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Patterson", is written over a circular stamp. The signature is fluid and cursive.

JERRY PATTERSON
Chairman
Senate Committee on
Veteran Affairs & Military Installations

JP/jl